

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	CASE NO. 8:02CR205
)	
Plaintiff,)	
)	AMENDED
vs.)	TENTATIVE FINDINGS
)	
REYNALDO G. DIAZ,)	
)	
Defendant.)	

The Court has received the Revised Presentence Investigation Report ("PSR") and the Defendant's objections thereto (Filing No. 129).¹ See Order on Sentencing Schedule, ¶ 6. As Judge Thomas M. Shanahan previously issued tentative findings by letter to counsel dated April 11, 2003, before the Defendant filed his objections, these are Amended Tentative Findings. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The Defendant objects to the lack of a downward adjustment for the safety valve in ¶ 35 of the PSR and to the lack of a downward adjustment for minor role in ¶ 36 of the PSR.

The objections will be addressed at sentencing.

IT IS ORDERED:

1. The Defendant's Objections to the Revised Presentence Investigation Report (Filing No. 129) will be heard at sentencing;

¹No objections were submitted to the probation office pursuant to ¶ 4 of the Order on Sentencing Schedule. The objections filed with the Court were filed more than three weeks late. (Filing No. 78, ¶ 6.)

2. Otherwise the Court's tentative findings are that the Revised Presentence Investigation Report is correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 6th day of May, 2005.

BY THE COURT:

s/Laurie Smith Camp
Laurie Smith Camp
United States District Judge